**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**SPECIAL CIVIL APPLICATION No. 13034 of 1994**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE A.S.DAVE**

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| 1 | Whether Reporters of Local Papers may be allowed to see the judgment ? |
| 2 | To be referred to the Reporter or not ? |
| 3 | Whether their Lordships wish to see the fair copy of the judgment ? |
| 4 | Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? |
| 5 | Whether it is to be circulated to the civil judge ? |

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**JAYANTILAL T JANI**
**Versus**
**TAKUKA DEVELOPMENT OFFICER & Others**

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**Appearance :**

**Shri C.L. Soni for the petitioner**

**Shri Anshin H. Desai for respondent No.1**

**Ms. Khyati P. Hathi for respondent No.2**

**Shri A.Y. Kogje, Assistant Government Pleader, for respondent No.3**

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**CORAM : HONOURABLE MR.JUSTICE A.S.DAVE**

**Date : 07/12/2005**

**ORAL JUDGMENT**

1.This petition under Article 226 of the Constitution of India is filed by the petitioner for an appropriate writ, order or direction directing respondent No.1 to regularize the service of the petitioner from the date on which the petitioner had joined service with the respondents, with all other consequential benefits and, in the meanwhile, not to terminate his services as Clerk.

2. The Court (Coram: J.M. Panchal, J.), while issuing notice to the respondents on 1st December 1994, by way of an ad-interim relief, directed the respondents to maintain status-quo as on that day. Thereafter, the Court (Coram: H.K. Rathod, J.), by an order dated 13th November 2000, issued Rule in the matter making it returnable on 19th December 2000.

3. Shri C.L. Soni, learned counsel for the petitioner, has contended that the petitioner

was appointed by the respondents-authorities by the order dated 4th October 1968 and the petitioner continued to serve as 'daily-rated clerk' on temporary basis with the respondents from time to time. The Executive Committee of respondent No.1-Taluka Panchayat also passed a resolution, whereby, the petitioner was placed on a honorary pay of Rs.150/- per month and, thereafter, he was given appointment to the post of work charge mistry-cum-clerk for Rs.6 per day by an order dated 24th December 1970 and, again, from 1.4.1971, the petitioner continued to serve as work charge mistry. The learned counsel for the petitioner has submitted that the appointment of the petitioner as junior clerk on ad-hoc basis was made on 30th August 1993 and that was also against a vacant post of clerk available with the Taluka Panchayat. The certificates of satisfactory performance of work by the petitioner were issued by the respondent-authority. He further submitted that the

petitioner made representations to the respondent-authority to regularize his service in view of vacant post available and the qualification prescribed for the said post, held by the petitioner. The petitioner was entitled, as claimed by the learned counsel for the petitioner, to the benefit of Government Resolution dated 17.10.1988 on completion of 10-15-20 years of service, respectively, as prescribed in the said Government Resolution. The petitioner has claimed benefit of the said Government Resolution in view of the fact that other similarly situated persons have been given the said benefits by number of Taluka Panchayats and District Panchayats in the State of Gujarat.

4.The respondent No.1-Taluka Panchayat has filed affidavit-in-reply and has opposed the claim of the petitioner on the ground that the Panchayat Service Selection Board is created for recruitment of junior clerk and procedure is required to be followed pursuant to the

advertisement that may be issued by the Selection Board. Since the Taluka Development Officer has no power to regularize the services of the petitioner, the request of the petitioner cannot be acceded to.

5. No affidavit-in-reply is filed either by the District Development Officer or by the State of Gujarat.

6. Shri Anshin H. Desai, learned counsel for the respondent No.1-Panchayat, has submitted that Government Resolution dated 17th October 1988, ipso-facto, is not applicable and, since entry into the service of the petitioner with respondent No.1 is not in accordance with the Rules, no direction can be given to respondent No.1-Taluka Panchayat to regularize the service of the petitioner. He has, further, submitted that alternative remedy is available for the petitioner to redress the grievances as agitated in this petition.

7. Considering the rival submissions of the learned counsel for the parties and on perusal

of the record, including affidavit in reply and rejoinder submitted by the parties, it is borne out from the record that during pendency of the petition, Civil Application No.4954 of 2000 was filed by the petitioner to claim, at least, minimum wages paid to the daily-rated employee and, after hearing the learned counsel for the parties, the learned Single Judge directed the respondents to pay Rs.65 per day to the petitioner towards minimum wages and, since the petitioner was getting Rs.24.75 ps per day, difference between Rs.24,75 ps and Rs.65 was ordered to be paid to the petitioner. Against the order of the learned Single Judge, respondent No.1-Taluka Panchayat filed Letters Patent Appeal No.1621 of 2001, which was dismissed by the Division Bench of this Court by order dated 6th October 2003.

8.The appointment of the petitioner at the relevant point of time was made by respondent No.1 by passing a resolution and he was allowed to continue on the post of junior clerk and was

discharging his duties as full time permanent employee. The petitioner is already having academic qualification required for the post of having passed SSC Examination and typing speed of 35 w.p.m and has also performed his duties diligently for about 37 years. The petitioner is only getting minimum wages as directed by this Court by order dated 23.7.2001 passed in Civil Application No.4954 of 2000 and confirmed in Letters Patent Appeal No.1621 of 2001 dated 6.10.2003.

9. Keeping in mind the above facts more particularly, more than 37 years of service of the petitioner as employee of respondent No.1-Taluka Panchayat on a clear vacancy and the fact that the petitioner possessed requisite qualification to be appointed on the post of junior clerk on regular basis with regular pay-scale, a case is made out by the petitioner to get the benefit of Government Resolution dated 17th October 1988, which prescribes a specific pay-scale for the employees, who have completed

10-15-20 years of service, respectively, as daily wager and completed 240 days as envisaged under the Industrial Disputes Act. The petitioner is entitled for the benefit of the pay-scale as prescribed in the aforesaid Government Resolution along with the benefit of gratuity, provident fund, and leave pay, etc and is also entitled to pension on his retirement.

10.The respondents-authorities being state and following welfare policy are duty bound to follow constitutional ideology as reflected in its Preamble and also in Articles 37, 38 and 51A of the Constitution of India. An employee fully qualified and who is recruited by passing a resolution as per law, by the State Authority and continued in service for more than 37 years without any stigma, cannot be deprived of his legitimate right to get regular pay-scale and other monetary benefits including retiral dues, simply on the ground that respondent No.1 has no power to regularize his service. Such

deprivation of regularization of service, after 37 years, is arbitrary and unreasonable exercise of power and violative of Articles 14 of the Constitution of India and, therefore, the following directions are issued.

(i) Respondent No.1 shall forward a proposal for regularization of service of the petitioner as a Clerk to the Competent Authority.

(ii) On receipt of the proposal sent by respondent No.1-Taluka Panchayat, through respondent No.2-District Development Officer, respondent No.3 shall consider the said proposal as a special case since the petitioner is qualified and has continuously worked for 37 years, keeping in mind various Government Resolutions with regard to regularization of service of daily wager including Government Resolution dated 17th October 1988 and also considering the judgment of the Division Bench of this Court in ONGC vs. Engineering Majoor Sangh, reported in 2005 (3) GLR 2152 particularly paragraphs 12.4, 13, 13.1 and 14

of the said judgment.

[iii] The aforesaid exercise shall be completed within a period of three months from the date of receipt of certified copy of this order.

11. With the above directions, Rule is made absolute to the above extent. There shall be no order as to costs.

[Anant S. Dave, J.]

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